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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL VINCENT JACKSON,

Defendant and Appellant.

E049761

(Super.Ct.No. SWF028400)

OPINION

APPEAL from the Superior Court of Riverside County. Albert J. Wojcik, Judge.

Affirmed.

Laura Kligman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Michael Vincent Jackson appeals from his felony conviction of one count of assault with a deadly weapon other than a firearm (Pen. Code, § 245, subd. (a)(1)). As explained below, we affirm the conviction.

FACTS AND PROCEDURE

On the evening of April 22, 2009, defendant was at home with his wife, their two children, and a family friend named Eric. Defendant and his wife argued while she was in the kitchen cleaning the stove. Defendant went to the garage to retrieve an aluminum baseball bat. He returned to the kitchen, said something to the effect of “I’m going to hit you,” and hit his wife twice on the back of her thighs while holding the bat with two hands.

Eric was sitting in the living room at the time and saw defendant swing the bat, but a counter partially obscured his view of the event. Eric tackled defendant to the ground while defendant’s wife ran upstairs to be with the children. Eric released defendant and then called 911. Eric had to restrain defendant a second time when he attempted to follow his wife upstairs.

When police arrived, defendant’s wife told them he had struck her in the back of the legs with the baseball bat. The officer saw red marks on the back of her thighs.

On July 1, 2009, the People charged defendant with assault with a deadly weapon. Defendant pled not guilty.

The jury trial began on September 2, 2009. On that date, the trial court denied defendant’s motion in limine to exclude prior alleged acts of domestic violence. Defendant’s wife testified at trial that she did not think defendant struck her and did not remember telling the officer the defendant had struck her.

On September 10, 2009, the jury found defendant guilty. On October 2, 2009, the trial court denied defendant’s motion to reduce the charges to a misdemeanor, placed him

on three years of probation and ordered him to serve 180 days in custody, either on weekends or on home detention.

DISCUSSION

Dependant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and three potential arguable issues: 1) whether the admission of prior uncharged acts of domestic violence by defendant was properly admitted into evidence pursuant to Evidence Code sections 1101, subdivision (b), and 1109, and whether the prejudicial nature of this evidence outweigh its probative value under Evidence Code section 352; 2) whether the trial court abused its discretion in denying defendant's motion to reduce the charge to a misdemeanor pursuant to section 17, subdivision (b); and 3) whether there was sufficient evidence to support the jury's verdict. Counsel has also requested this court to undertake a review of the entire record. We have conducted an independent review of the record and find no arguable issues.

We offered defendant an opportunity to file a personal supplemental brief, which he has done. He claims that: 1) his attorney's "demeanor and the amount of time that was put into" his case changed after she was insulted by some comments he made; 2) his attorney failed to present several key pieces of evidence at trial; and 3) "[t]he State presented evidence that should have been objected to by my attorney, yet was not, yet after it was presented and the jury heard it, the judge then took it on his own to not allow it."

Regarding the ineffective assistance of counsel allegations reflected in the first two of defendant's three claims, these are based on matters outside the record on appeal. Ineffective assistance of counsel claims based on matters outside the record on direct appeal are more appropriately raised in a habeas corpus proceeding. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) We must therefore reject defendant's ineffective assistance of counsel claims.

Defendant also contends that defense counsel failed to object to evidence presented by the state, which was later disallowed by the trial court after the jury had heard it. After reviewing the record, we are unable to determine to what evidence defendant refers. Because defendant fails to present this argument in a cogent manner, we need not consider the issue. (*People v. Bonin* (1989) 47 Cal.3d 808, 857, fn. 6.)

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P.J.

We concur:

McKINSTER
J.

KING
J.